

Rule 41 . . . speaks only to the dismissal of “actions.” Plaintiff does not seek, at this juncture, to dismiss the entire action; rather, as stated *supra*, he wishes to dismiss certain claims within this action Rather than a Rule 41 dismissal, the Plaintiff should seek to amend his complaint by meeting the requirements of Rule 15. “A plaintiff wishing to eliminate particular claims or issues from the action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a).” *Moore’s Federal Practice 3d*, § 41,21[2] (citing *Skinner v. First Am. Bank of Virginia*, 64 F.3d 659 (table), 1995 WL 507264 (4th Cir. 1995)).

Id. The decision in Gahagan is consistent with Rule 41(a)(1), which speaks only to dismissal of actions, not particular claims or parties. Fed.R.Civ.P. 41. By requiring amendment of a complaint to reflect active claims and active defendants, the court as well as the public can remain aware of the claims plaintiff is making. Further, an amended complaint, if read to a jury, must accurately reflect the claims and the parties in order to avoid confusion. Inasmuch as counsel are in agreement as to the proper parties to this action, there should be no obstacle to amendment of the Complaint by written consent. Fed.R.Civ.P. 15(a)(2).

ORDER

IT IS, THEREFORE, ORDERED that the joint Motion to Voluntarily Dismiss Without Prejudice Certain Defendants (#23) is respectfully DENIED without prejudice.

Signed: July 21, 2009

Dennis L. Howell

Dennis L. Howell
United States Magistrate Judge

